S.B.CIVIL MISC. APPEAL NO.667/2002

Kanhaiya Lal.
vs.
Bhawan Das.

DATE OF JUDGMENT ::: 3.3.2006

PRESENT

HON'BLE MR. PRAKASH TATIA, J.

Mr. Mohd. Aslam for Mr.M Shishodia, for the appellant.
Mr. BR Mehta, for the respondents.

- - - - -

Heard learned counsel for the parties.

According to learned counsel for the appellant, the trial court decreed the suit of the plaintiff for eviction of the defendant on the ground of default and personal bonafide necessity, however, in the trial court, the rent was not determined under Section 13A of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (for short 'the Act of 1950'). The tenant/respondent preferred an appeal to challenge the judgment and decree of the trial court. Said appeal was allowed only on the ground that the trial court did not determine the rent.

According to learned counsel for the appellant, the determination of rent is required only for the purpose of giving benefit of first default to the tenant. The determination of rent has nothing to do with respect to the findings recorded on any of the issues including even the

finding on the question of default for the period prior to filing of the suit. The determination of the rent under Section 13(3) of the Act of 1950 gives benefit to the tenant of paying rent of default period along with interest so that he may avoid decree for his eviction from the suit premises on the ground of committing first default in payment of rent of six months or more. By this provision, the tenant is entitled to claim benefit on condition that he shall pay the monthly rent to the landlord in time as provided under Section 13(4) of the Act of 1950 and in case, the tenant fails to deposit the determined arrears of rent and/or rent during the pendency of the suit, then his defence is liable to be struck off. The scheme of Sub-Sections (3) to (6) of Section 13 of the Act of 1950 clearly reveals that the determination of rent or non-determination of rent cannot affect the merit of the case so far as any of the issues are concerned.

In the present case, the suit was filed on two grounds namely, default in payment of rent as well as on the ground of personal bonafide necessity of the plaintiff. Even if because of any reason, the question of default is decided against the plaintiff, the decree for eviction of tenant on the ground of personal bonafide necessity cannot be set aside merely because of the fact that the plaintiff was not entitled to decree of eviction on the ground of default. A reasoned decision on any issue cannot be set aside without any reason and basis. Apart from the above, the non-determination of the rent in this case has not affected the finding of the trial court on the question of default.

It is submitted that in fact, by non-determination of rent by the trial court, the landlord was deprived of benefit of getting the rent from the tenant and in case of default, for getting the order of striking out of defence of the tenant.

Learned counsel for the respondent submits that the trial court was under obligation to determine the rent and determination of the rent is the statutory duty of the Court.

I considered the submissions of learned counsel for the parties and perused the facts of the case.

I found force in submission of learned counsel for the appellant that the determination of rent is a procedural matter by which an opportunity is given to the tenant to pay all the arrears of rent along with interest at the rate of 6% p.a. and avoid decree of his eviction on the ground of his first default. Because of the determination of rent under Section 13(3), the landlord gets the arrears of rent and rent during the pendency of the suit in time. The procedure for trial of the suit is affected only when the tenant commits default in payment of determined rent or rent during the pendency of the suit. By this, he suffers an order of striking of defence and consequence of which is that the tenant's defence against default will not be heard by the Court and the tenant may suffer decree for his eviction on the ground of default and in that the landlord

may succeed because of want of rebuttal from the defendant.

In case, where the rent is not determined, the tenant will not face such grave situation of danger of striking of his defence. In any case, the merit of the case on any of the issue is not affected except on the question of default. The determination of rent and thereafter payment of rent in the trial court requires neither framing of the issue and leading of any evidence. It is decided as per the plaint allegation and defence taken, therefore, setting aside of the entire judgment of the trial court on the ground of non-determination of rent by the trial court under Section 13(3) cannot be sustained. The first appellate court could have remitted the matter back to the trial court for determination of rent or could have granted time to the tenant to deposit the rent in the trial court as per the determined rent or in appellate court for which appropriate order could have been passed by the appellate court. If the appellate court could not have decided the appeal thereafter in time, that would not have affected the fate of the appeal in any manner.

In view of the above discussion, this appeal is allowed, the order of the first appellate court dated 7.1.2002 is set aside, the matter is remitted to the trial court for determination of rent and the trial court may pass appropriate order for deposit of rent in the trial court in accordance with law as after determination of the rent, the matter is required to be sent back to the appellate court and the appeal is continuation of suit,

therefore, the rent can be deposited in the trial court.

Both the parties are directed to appear before the trial court on 28.3.2006.

The record of the trial court be sent forthwith to the trial court and the record of the first appellate court be sent forthwith to the first appellate court with the copy of this order to both the courts.

(PRAKASH TATIA), J.

S.Phophaliya